

MONTANA LEGISLATIVE HISTORY

Chapter 539 19 97

Bill H 524 S _____ Original bill & history / c

H. Committee on Natural Resources

S. Committee on Natural Res.

Hearing Date(s) 2-17 ✓ c

Hearing Date(s) 3-14 ✓ c ^{NO} EXHIBIT

EXEC ACTION 2/19 X c

EXEC ACTION 3/19 X c

_____ c

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_____ c

~~3-18~~ c

Date Out ~~2/19~~ c

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

8 HEARING
 0 TABLED IN COMMITTEE
 4 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 5 2ND READING CONCURRED 50 0
 7 3RD READING CONCURRED 48 1
 0 RETURNED TO HOUSE WITH AMENDMENTS
 2ND READING AMENDMENTS CONCURRED 88 3
 1 3RD READING CONCURRED AS AMENDED 93 3
 7 SIGNED BY SPEAKER
 7 SIGNED BY PRESIDENT
 8 TRANSMITTED TO GOVERNOR
 8 SIGNED BY GOVERNOR
 CHAPTER NUMBER 404
 EFFECTIVE DATE: 10/01/97

PRODUCED BY SWANSON

LC1256 DRAFTER: KURTZ

LOW THE FISH, WILDLIFE, AND PARKS COMMISSION TO ESTABLISH A
 FEE NOT TO EXCEED \$10 FOR A BLOCK MANAGEMENT AREA HUNTING
 PERMIT

1 INTRODUCED
 1 FIRST READING
 1 REFERRED TO FISH, WILDLIFE & PARKS
 1 FISCAL NOTE REQUESTED
 5 FISCAL NOTE RECEIVED
 5 FISCAL NOTE PRINTED
 9 REVISED FISCAL NOTE RECEIVED
 9 REVISED FISCAL NOTE PRINTED
 6 HEARING
 1 TABLED IN COMMITTEE
 5 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
 DIED IN COMMITTEE

PRODUCED BY RYAN

LC1255 DRAFTER: PETESCH

REVISE THE GENERAL RULES FOR DETERMINING RESIDENCE

1 INTRODUCED
 1 FIRST READING
 1 REFERRED TO STATE ADMINISTRATION
 7 HEARING
 3 COMMITTEE REPORT—BILL PASSED
 3 2ND READING PASSED 89 11
 0 3RD READING PASSED 90 10
 7 TRANSMITTED TO SENATE
 1 FIRST READING
 1 REFERRED TO STATE ADMINISTRATION
 3 HEARING
 3 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 3 2ND READING CONCURRED 50 0
 7 3RD READING CONCURRED 47 3
 0 RETURNED TO HOUSE WITH AMENDMENTS
 2ND READING AMENDMENTS CONCURRED 94 0
 2 3RD READING CONCURRED AS AMENDED 88 7
 7 SIGNED BY SPEAKER
 7 SIGNED BY PRESIDENT
 7 TRANSMITTED TO GOVERNOR
 7 SIGNED BY GOVERNOR
 CHAPTER NUMBER 367
 EFFECTIVE DATE: 10/01/97

HB 522 INTRODUCED BY CLARK

LC0820 DRAFTER: LANE

REVISE THE LAW RELATING TO LIBEL AND SLANDER TO INCLUDE AS LIBEL
 OR SLANDER THE UNTRUE ACCUSATION OF A VIOLATION OF A LAW
 RESULTING IN A THREAT TO PUBLIC HEALTH, SAFETY, OR THE
 ENVIRONMENT

2/11 INTRODUCED
 2/11 FIRST READING
 2/11 REFERRED TO JUDICIARY
 2/27 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
 DIED IN COMMITTEE

HB 523 INTRODUCED BY MCCULLOCH, ET AL. LC1277 DRAFTER: ERICKSON
 CLARIFY THE PENALTIES FOR A VIOLATION OF SCHOOL
 TRANSPORTATION LAW OR BOARD OF PUBLIC EDUCATION
 TRANSPORTATION POLICY

2/11 INTRODUCED
 2/11 FIRST READING
 2/11 REFERRED TO EDUCATION & CULTURAL RESOURCES
 2/14 HEARING
 2/20 COMMITTEE REPORT—BILL PASSED 85 11
 2/22 2ND READING PASSED 88 11
 2/26 3RD READING PASSED

TRANSMITTED TO SENATE
 3/04 FIRST READING
 3/04 REFERRED TO EDUCATION & CULTURAL RESOURCES
 3/14 HEARING
 3/27 COMMITTEE REPORT—BILL CONCURRED AS AMENDED 50 0
 4/04 2ND READING CONCURRED 49 1
 4/05 3RD READING CONCURRED

RETURNED TO HOUSE WITH AMENDMENTS 85 10
 4/12 2ND READING AMENDMENTS CONCURRED 91 8
 4/14 3RD READING CONCURRED AS AMENDED
 4/20 SIGNED BY SPEAKER
 4/24 SIGNED BY PRESIDENT
 4/25 TRANSMITTED TO GOVERNOR
 4/29 SIGNED BY GOVERNOR
 CHAPTER NUMBER 427
 EFFECTIVE DATE: 10/01/97

HB 524 INTRODUCED BY ANDERSON, ET AL. LC0897 DRAFTER: MITCHELL
 REVISE REMEDIATION REQUIREMENTS FOR HAZARDOUS AND
 DELETERIOUS SUBSTANCES

2/11 INTRODUCED
 2/11 FIRST READING
 2/11 REFERRED TO NATURAL RESOURCES
 2/17 HEARING
 2/20 COMMITTEE REPORT—BILL PASSED AS AMENDED 66 34
 2/22 2ND READING PASSED 66 34
 2/26 3RD READING PASSED

TRANSMITTED TO SENATE
 3/04 FIRST READING
 3/04 REFERRED TO NATURAL RESOURCES
 3/14 HEARING
 3/21 COMMITTEE REPORT—BILL CONCURRED AS AMENDED 34 12
 3/27 2ND READING CONCURRED 38 10
 3/28 3RD READING CONCURRED

4/14 RETURNED TO HOUSE WITH AMENDMENTS
 4/15 2ND READING AMENDMENTS CONCURRED 77 23
 4/15 3RD READING CONCURRED AS AMENDED 64 34
 4/19 SIGNED BY SPEAKER
 4/24 SIGNED BY PRESIDENT
 4/25 TRANSMITTED TO GOVERNOR
 5/05 SIGNED BY GOVERNOR
 CHAPTER NUMBER 539
 EFFECTIVE DATE: 05/05/97

HB 525 INTRODUCED BY KOTTEL LC0582 DRAFTER: HEIMAN

PROVIDE THAT THE PAYMENT OF A PENALTY MAY NOT BE IMPOSED FOR
 NONPAYMENT OR UNDERPAYMENT OF ESTIMATED TAXES ON
 FEDERAL ANNUITY PAYMENTS UNLESS THE DEPARTMENT HAS
 ENTERED AN AGREEMENT FOR VOLUNTARY WITHHOLDING FROM THE
 FEDERAL ANNUITY PAYMENTS

2/11 INTRODUCED
 2/11 FIRST READING
 2/11 REFERRED TO TAXATION
 2/11 FISCAL NOTE REQUESTED
 2/17 FISCAL NOTE RECEIVED
 3/04 HEARING
 3/04 Tabled IN COMMITTEE
 4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
 DIED IN COMMITTEE

HB 526 INTRODUCED BY QUILICI, ET AL. LC1391 DRAFTER: KURTZ

AUTHORIZE THE ISSUANCE OF WHIRLING DISEASE RESEARCH LICENSE
 PLATES
 BY REQUEST OF SENATE FISH & GAME COMMITTEE

2/11 INTRODUCED
 2/11 FIRST READING
 2/11 REFERRED TO TRANSPORTATION
 2/11 FISCAL NOTE REQUESTED
 2/15 FISCAL NOTE RECEIVED
 2/17 FISCAL NOTE PRINTED
 2/19 HEARING
 3/10 Tabled IN COMMITTEE
 4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
 DIED IN COMMITTEE

HB 527 INTRODUCED BY RYAN, ET AL. LC0939 DRAFTER: HEFFELFINGER

PROVIDE A ONE-TIME PERMANENT AD HOC POSTRETIREMENT BENEFIT
 INCREASE FOR RETIRED MEMBERS AND BENEFIT RECIPIENTS
 COVERED UNDER THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEM

2/12 INTRODUCED
 2/12 FIRST READING
 2/12 REFERRED TO STATE ADMINISTRATION
 2/12 FISCAL NOTE REQUESTED
 2/17 HEARING
 2/18 FISCAL NOTE RECEIVED
 2/21 FISCAL NOTE PRINTED
 3/21 Tabled IN COMMITTEE
 4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
 DIED IN COMMITTEE

HB 528 INTRODUCED BY WELLS, ET AL. LC1218 DRAFTER: ERICKS

DECLARE THAT THE RIGHT OF PARENTS TO DIRECT THE UPBRINGING
 THEIR CHILDREN IS A FUNDAMENTAL RIGHT

2/12 INTRODUCED
 2/12 FIRST READING
 2/12 REFERRED TO JUDICIARY
 2/18 HEARING
 2/20 Tabled IN COMMITTEE
 2/21 MOTION FAILED TO TAKE FROM COMMITTEE & PLACE 51
 ON 2ND READING
 2/27 MISSED DEADLINE FOR 45TH DAY TRANSMITTAL
 DIED IN COMMITTEE

HB 529 INTRODUCED BY DENNY LC1351 DRAFTER: EVE

REVISE THE LAWS THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY
 ADMINISTERS

2/12 INTRODUCED
 2/12 FIRST READING
 2/12 REFERRED TO NATURAL RESOURCES
 2/12 FISCAL NOTE REQUESTED
 2/15 FISCAL NOTE PRINTED
 2/17 HEARING
 2/18 COMMITTEE REPORT—BILL PASSED
 2/21 2ND READING PASSED 100
 2/26 3RD READING PASSED 99

TRANSMITTED TO SENATE
 3/04 FIRST READING
 3/04 REFERRED TO NATURAL RESOURCES
 3/24 HEARING
 3/25 COMMITTEE REPORT—BILL CONCURRED
 4/04 2ND READING CONCURRED 47
 4/05 3RD READING CONCURRED 50

RETURNED TO HOUSE
 4/08 SIGNED BY SPEAKER
 4/10 SIGNED BY PRESIDENT
 4/10 TRANSMITTED TO GOVERNOR
 4/16 SIGNED BY GOVERNOR
 CHAPTER NUMBER 273
 EFFECTIVE DATE: 04/16/97

HB 530 INTRODUCED BY BRAINARD, ET AL. LC1047 DRAFTER: ERIC

REGULATE BICYCLES

2/12 INTRODUCED
 2/12 FIRST READING
 2/12 REFERRED TO TRANSPORTATION
 2/12 FISCAL NOTE REQUESTED
 2/18 FISCAL NOTE RECEIVED
 2/18 FISCAL NOTE PRINTED
 2/19 HEARING
 2/19 Tabled IN COMMITTEE
 4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
 DIED IN COMMITTEE

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INTRODUCED BY *Anderson Grosfield Recovery HARP* *House* BILL NO. *524*

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING REMEDIATION REQUIREMENTS FOR HAZARDOUS AND DELETERIOUS SUBSTANCES; PROVIDING THAT A PERSON LIABLE FOR REMEDIAL ACTION HAVE THE OPPORTUNITY TO RESPOND PRIOR TO REMEDIAL ACTION BEING INITIATED BY THE STATE; CLARIFYING THE PROCESS FOR WHEN STATE ORDERS MAY BE ISSUED; ELIMINATING THE REQUIREMENT FOR AGREEMENTS TO BE FILED IN DISTRICT COURT AS CONSENT DECREES; INCREASING ELIGIBILITY FOR SITES SUBMITTING VOLUNTARY REMEDIATION PLANS; PROVIDING FOR APPEAL OF AGENCY DECISIONS REGARDING REMEDIATION PLANS; AMENDING SECTIONS 75-10-711, 75-10-723, 75-10-732, AND 75-10-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

It is the intent of this bill to provide potentially liable persons the opportunity to take the necessary remedial action before the state takes action.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-10-711, MCA, is amended to read:

"75-10-711. Remedial action -- orders -- penalties -- judicial proceedings. (1) The department may take remedial action whenever:

(a) there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, welfare, or safety or the environment; and

(b) the appropriate remedial action will not be done properly and expeditiously by any person liable under 75-10-715(1) and that person has been given the opportunity by letter to expeditiously perform the appropriate remedial action. Any person liable under 75-10-715(1) shall take immediate action to contain, remove, and abate the release.

(2) Whenever the department is authorized to act pursuant to subsection (1) or has reason to believe that a release has occurred or is about to occur, the department may undertake remedial action in

1 the form of any investigation, monitoring, survey, testing, or other information gathering as authorized by
2 75-10-707 that is necessary and appropriate to identify the existence, nature, origin, and extent of the
3 release or the threat of release and the extent and imminence of the danger to the public health, safety
4 or welfare or the environment.

5 (3) ~~Any person liable under 75-10-715(1) must take immediate action to contain, remove, and~~
6 ~~abate the release.~~ Except as provided in 75-10-712, the department is authorized to draw upon the fund
7 to take action under subsection (1) if it has made diligent good faith efforts to determine the identity of the
8 person or persons liable for the release or threatened release and:

9 (a) is unable to determine the identity of the liable person or persons in a manner consistent with
10 the need to take timely remedial action; or

11 (b) the person or persons determined by the department to be liable under 75-10-715(1) have been
12 informed in writing of the department's determination and have been requested by the department to take
13 appropriate remedial action but are unable or unwilling to take action in a timely manner; and

14 (c) the written notice to each person informs the person that if subsequently found liable pursuant
15 to 75-10-715(1), the person may be required to reimburse the fund for the state's remedial action costs
16 and may be subject to penalties pursuant to this part.

17 (4) Whenever the department is authorized to act pursuant to subsection (1) ~~or has reason to~~
18 ~~believe that a release that may pose an imminent and substantial threat to the public health, safety, or~~
19 ~~welfare or the environment has occurred or is about to occur,~~ it may issue to any person liable under
20 75-10-715(1) cease and desist, remedial, or other orders as may be necessary or appropriate to protect the
21 public health, safety, or welfare or the environment.

22 (5) (a) A person who violates or fails or refuses to comply with an order issued under 75-10-707
23 or this section may, in an action brought to enforce the order, be assessed a civil penalty of not more than
24 \$10,000 for each day in which a violation occurs or a failure or refusal to comply continues. In determining
25 the amount of any penalty assessed, the court may take into account:

26 (i) the nature, circumstances, extent, and gravity of the noncompliance;

27 (ii) with respect to the person liable under 75-10-715(1):

28 (A) the person's ability to pay;

29 (B) any prior history of violations;

30 (C) the degree of culpability; and

1 (D) the economic benefit or savings, if any, resulting from the noncompliance; and

2 (iii) any other matters as justice may require.

3 (b) Civil penalties collected under subsection (5)(a) must be deposited into the environmental
4 quality protection fund established in 75-10-704.

5 (6) A court has jurisdiction to review an order issued under 75-10-707 or this section only in the
6 following actions:

7 (a) an action under 75-10-715 to recover remedial action costs or penalties or for contribution;

8 (b) an action to enforce an order issued under 75-10-707 or this section;

9 (c) an action to recover a civil penalty for violation of or failure to comply with an order issued
10 under 75-10-707 or this section; or

11 (d) an action by a person to whom an order has been issued to determine the validity of the order,
12 only if the person has been in compliance and continues in compliance with the order pending a decision
13 of the court.

14 (7) In considering objections raised in a judicial action regarding orders issued under this part, the
15 court shall uphold and enforce an order issued by the department unless the objecting party can
16 demonstrate, on the administrative record, that the department's decision to issue the order was arbitrary
17 and capricious or otherwise not in accordance with law.

18 (8) Instead of issuing a notification or an order under this section, the department may bring an
19 action for legal or equitable relief in the district court of the county where the release or threatened release
20 occurred or in the first judicial district as may be necessary to abate any imminent and substantial
21 endangerment to the public health, safety, or welfare or the environment resulting from the release or
22 threatened release.

23 (9) The department may take remedial action pursuant to subsection (1) at a site that is regulated
24 under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public
25 Law 96-510, if the department determines that remedial action is necessary to carry out the purposes of
26 this part."

27
28 **Section 2.** Section 75-10-723, MCA, is amended to read:

29 **"75-10-723. Agreements and administrative orders on consent to perform remedial action.** (1) To
30 expedite effective remedial actions and minimize litigation, the department, in its discretion and whenever

1 practicable and in the public interest, may negotiate and enter into an agreement or an administrative order
2 on consent with any person, including the owner or operator of the facility from which a release emanates,
3 to perform a remedial action if the department determines that the action will be properly done by the
4 person. The agreement must contain terms and conditions that the department in its discretion determines
5 to be appropriate.

6 (2) Whenever the department enters into an ~~agreement~~ administrative order on consent under this
7 section for remedial action or for assessment or payment of natural resource damages, ~~the agreement must~~
8 ~~be filed in an appropriate district court as a consent decree and~~ that administrative order on consent must
9 be available for public comment for at least 30 days.

10 (3) A decision of the department to enter into or not enter into agreements or administrative orders
11 on consent under this section is not subject to judicial review."

12
13 **Section 3.** Section 75-10-732, MCA, is amended to read:

14 **"75-10-732. (Temporary) Eligibility.** (1) A facility where there has been a release or threatened
15 release of a hazardous or deleterious substance that may present an imminent and substantial
16 endangerment to the public health, safety, or welfare or the environment may be eligible for voluntary
17 cleanup procedures under this part, except for facilities that meet one of the following criteria at the time
18 of application for a voluntary cleanup plan:

19 (a) a facility that is listed or proposed for listing on the national priorities list pursuant to 42 U.S.C.
20 9601, et seq.;

21 (b) a facility for which an order has been issued or consent decree has been entered into pursuant
22 to this part;

23 (c) a facility that is the subject of an agency order or an action filed in district court by any state
24 agency that addresses the release or threatened release of a hazardous or deleterious substance; or

25 (d) a facility where the release or threatened release of a hazardous or deleterious substance is
26 regulated by the Montana Hazardous Waste and Underground Storage Tank Act and regulations under that
27 act; or

28 (e) a facility that is the subject of pending action under this part because the facility has been
29 issued a notice commencing a specified period of negotiations on an administrative order on consent.

30 (2) Notwithstanding the provisions of subsections (1)(b) through (1)(e), the department may

to accept and may approve an application for a voluntary cleanup plan for a facility.

(3) The department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety, and welfare and the environment and that the complexities should be addressed under an administrative order on consent or consent decree pursuant to this part. This determination may be made only after consultation with any person desiring to conduct a voluntary cleanup at the facility.

(4) If an applicant ~~that~~ who submits an application for a voluntary cleanup plan disagrees with the department's decision to reject the filing of the application under subsection (1) or (3), or disagrees with the department's decision to disapprove the voluntary cleanup plan submitted pursuant to 75-10-736, the applicant may, within 30 days of receipt of the department's written decision pursuant to 75-10-736, submit a written request for a hearing before the board of environmental review. In reviewing a department decision to reject an application under subsection (1) or (3) or to disapprove a voluntary cleanup plan submitted pursuant to 75-10-736, the board shall apply the standards of review specified in 2-4-704. The hearing must be held within 2 months at the regular meeting of the board or at the time mutually agreed to by the board, the department, and the applicant. The hearing and any appeals must be conducted in accordance with the contested case proceedings pursuant to Title 2, chapter 4, parts 6 and 7. A hearing before the board may not be requested regarding a decision of the department made pursuant to subsection (2). (Terminates January 1, 2001--sec. 27, Ch. 584, L. 1995.)"

Section 4. Section 75-10-736, MCA, is amended to read:

"75-10-736. (Temporary) Approval of voluntary cleanup plan -- time limits -- content of notice -- expiration of approval. (1) The department shall review for completeness, including adequacy and accuracy, an application for a voluntary cleanup plan and shall provide a written completeness notice to the applicant within 30 days after receipt of the application. The completeness notice must note all deficiencies identified in the information submitted.

(2) For a voluntary cleanup plan that is considered complete by the department pursuant to subsection (1), the department shall provide formal written notification that the voluntary cleanup plan has been approved or disapproved no more than 60 days after the department's determination that an application is complete, unless the applicant and the department agree to an extension of the review to a date certain. The review must be limited to a review of the materials submitted by the applicant, public

1 comments, and documents or information readily available to the department. The department shall
2 communicate with the applicant during the review period to ensure that the applicant has the opportunity
3 to address the public comments.

4 (3) (a) If the department receives five applications for review of a voluntary cleanup plan in a
5 calendar month, including applications deferred from prior months, the department may notify any additional
6 applicants in that month that their plans must be reviewed in the order received. The 30-day period for
7 department completeness review of deferred applications pursuant to subsection (1) must begin on the first
8 day of the subsequent month that each plan is eligible for review.

9 (b) The department shall discontinue accepting voluntary cleanup applications when 15 applications
10 are pending and are being reviewed by the department. The department shall establish a waiting list for
11 applications and shall consider the applications in order of submittal.

12 (c) If the department has received multiple cleanup applications for a voluntary cleanup at the same
13 facility, the department shall notify all of the applicants and offer them the opportunity to submit a joint
14 application.

15 (4) Consistent with the provisions of 75-10-707, the department may access the facility during
16 review of the application and implementation of the voluntary cleanup plan to confirm information provided
17 by the applicant and verify that the cleanup is being conducted consistent with the approved plan.

18 (5) The department shall approve a voluntary cleanup plan if the department concludes that the
19 plan meets the requirements specified in 75-10-734 and will attain a degree of cleanup and control of
20 hazardous or deleterious substances that complies with the requirements of 75-10-721. Except for the
21 period necessary for the operation and maintenance of the approved remediation proposal, the department
22 may not approve a voluntary remediation proposal that would take longer than ~~24~~ 60 months after
23 department approval to complete.

24 (6) If a voluntary cleanup plan is not approved by the department, the department shall promptly
25 provide the applicant with a written statement of the reasons for denial. The denial may be appealed to the
26 board of environmental review in accordance with the provisions of 75-10-732(4).

27 (7) The approval of a voluntary cleanup plan by the department applies only to conditions at the
28 facility that are known to the department at the time of department approval. If a voluntary remediation
29 proposal is not initiated within 12 months and, except for the period necessary for the operation and
30 maintenance of the approved remediation proposal, is not completed within 24 months after approval by

1 the department, the department's approval lapses. However, the department may grant an extension of the
2 time limit for completion of the voluntary cleanup plan.

3 (8) If reasonably unforeseeable conditions are discovered during implementation of a voluntary
4 cleanup plan that substantially affect the risk to public health, safety, or welfare or the environment or
5 substantially change the scope of the approved plan, the applicant shall promptly notify the department.
6 The department may require the applicant to submit an amendment to the approved plan to address the
7 unforeseen conditions or may determine that a voluntary cleanup plan is no longer appropriate pursuant to
8 75-10-732(3).

9 (9) Written notification by the department that a voluntary cleanup plan is not approved must state
10 the basis for disapproval of the voluntary cleanup plan.

11 (10) (a) Failure of the applicant or the applicant's agents to materially comply with the voluntary
12 cleanup plan approved by the department pursuant to this section renders the approval void.

13 (b) Submission of materially misleading information by the applicant or the applicant's agents in
14 the application or during implementation of the voluntary cleanup plan renders the department approval
15 void.

16 (11) Within 60 days after completion of the approved remediation proposal described in the
17 voluntary cleanup plan approved by the department, the applicant shall provide to the department a
18 certification from a qualified environmental professional that the plan has been fully implemented, including
19 all documentation necessary to demonstrate the successful implementation of the plan, such as
20 confirmation sampling, if necessary.

21 (12) Except as provided in 75-10-738(2)(b), the department may not require financial assurance
22 under this part for voluntary cleanup plans approved under this section.

23 (13) If a person who would otherwise not be a liable person under 75-10-715(1) elects to undertake
24 an approved voluntary cleanup plan, the person may not become a liable person under 75-10-715(1) by
25 undertaking a voluntary cleanup if the person materially complies with the voluntary cleanup plan approved
26 by the department pursuant to this section.

27 (14) Immunity from liability under this section does not apply to a release that is caused by conduct
28 that is negligent or grossly negligent or that constitutes intentional misconduct. (Terminates January 1,
29 2001--sec. 27, Ch. 584, L. 1995.)"
30

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-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on February 17, 1997, at
3:00 p.m., in Room 437

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: none

Members Absent: none

Staff Present: Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 546 (2/13), HB 494 (2/12),
HB 529 (2/12), HB 524 (2/12)
Executive Action: HB 395 DO PASS AS AMENDED (12-
6), HB 529 DO PASS (18-0)

HEARING ON HB 546

Opening Statement by Sponsor:

Rep. Bill Tash, HD #34

{Tape: 1; Side: a; Approx. Time Count: 1.5; Comments: none.}

Debbie Smith, MT Chapter of the Sierra Club
{Tape: 1; Side: b; Approx. Time Count: 19.0; Comments: none.}

Jim Jensen, Director of MT Environmental Information Center
{Tape: 1; Side: b; Approx. Time Count: 23.0; Comments: none.}

Stan Frazier, self
{Tape: 1; Side: b; Approx. Time Count: 26.4; Comments: none.}

Janet Ellis, MT Audubon
{Tape: 1; Side: b; Approx. Time Count: 27.3; Comments: none.}

Wade Sikorski, self
{Tape: 1; Side: b; Approx. Time Count: 29.4; Comments: none.}

Informational Testimony:

Mike Valesky, MT Association of Conservation Districts
{Tape: 1; Side: b; Approx. Time Count: 30.0; Comments: none.}

Questions From Committee Members and Responses:

{Tape: 1; Side: b; Approx. Time Count: 33.3; Comments: none.}

{Tape: 1; Side: b; Approx. Time Count: end; Comments: flipped
tape at the end.}

{Tape: 2; Side: a; Approx. Time Count: 0.1; Comments: none.}

{Tape: 2; Side: a; Approx. Time Count: end; Comments: flipped
tape at the end.}

{Tape: 2; Side: b; Approx. Time Count: 0.1; Comments: none.}

Closing by Sponsor:

Rep. Tash closed
{Tape: 2; Side: b; Approx. Time Count: 2.5; Comments: none.}

Rep. Knox assigned a Subcommittee to evaluate the proposed
amendments from various entities. Rep. Tash will be the Chair,
rest of Committee consists of Reps. Story, Mood, Harper and
Ellingson.

{Tape: 2; Side: b; Approx. Time Count: 9.5; Comments: none.}

HEARING ON HB 524

Opening Statement by Sponsor:

Rep. Shiell Anderson, HD #25
{Tape: 2; Side: b; Approx. Time Count: 9.8; Comments: none.}

Proponents' Testimony:

Leo Berry, attorney MT Power Company
{Tape: 2; Side: b; Approx. Time Count: 11.0; Comments: none.}

Roxanne Kohl, MT Audubon, Exhibit #7 (supplied written testimony only)

Denise Mills, Remediation Coordinator for Department of Environmental Quality submitted Exhibits #9 & 10
{Tape: 2; Side: b; Approx. Time Count: 17.7; Comments: Exhibit #9 & 10.}

Anne Hedges, MT Environmental Information Center
{Tape: 2; Side: b; Approx. Time Count: 20.1; Comments: none.}

Opponents' Testimony: none

Questions From Committee Members and Responses:

{Tape: 2; Side: b; Approx. Time Count: 21.5; Comments: none.}

Closing by Sponsor: Rep. Anderson closed

{Tape: 2; Side: b; Approx. Time Count: 23.9; Comments: none.}

HEARING ON HB 494

Opening Statement by Sponsor:

Rep. Jon Ellingson, HD #65

{Tape: 2; Side: b; Approx. Time Count: 25.9; Comments: none.}

Proponents' Testimony:

David Dittloff, MT Audubon, Exhibit #8 (written testimony only)

Patrick Judge, MT Environmental Information Center submitted Exhibit #11

{Tape: 2; Side: b; Approx. Time Count: 33.3; Comments: Exhibit #11.}

Richard Parks, MT Wildlife Federation submitted Exhibit #12

{Tape: 2; Side: b; Approx. Time Count: 44.1; Comments: Exhibit #12.}

{Tape: 2; Side: b; Approx. Time Count: end; Comments: flipped at end of the tape.}

Debbie Smith, MT Chapter of Sierra Club

{Tape: 3; Side: a; Approx. Time Count: 0.1; Comments: none.}

Wade Sikorski, self, concerned citizen from Eastern MT

{Tape: 3; Side: a; Approx. Time Count: 3.6; Comments: none.}

Opponents' Testimony: Jim Mockler, MT Coal Council

{Tape: 3; Side: a; Approx. Time Count: 4.1; Comments: none.}

Candace Torgerson, Colstrip Energy Limited Partnership & Yellowstone Energy Limited Partnership submitted Exhibit #14

{Tape: 3; Side: a; Approx. Time Count: 8.0; Comments: Exhibit #14.}

Exhibit # 7

~~HB 524~~

HB 524

2/17/97

HOUSE OF REPRESENTATIVES
Natural Resources COMMITTEE
WITNESS STATEMENT

PLEASE PRINT

NAME Roxanne Kohl BILL NO. HB 524

ADDRESS _____ DATE _____

WHOM DO YOU REPRESENT? MT. Audubon

SUPPORT X OPPOSE _____ AMEND X

COMMENTS: We support this bill but would also like
to fully support DEQ's amendments.

exhibit # 89
HB 524
2/17/97

AMENDMENTS TO HOUSE BILL 524
(Introduced Bill)

1. Page 1, line 26.

Following: "and"

Strike: "that"

Insert: "each"

Following: "person"

Insert: "that is liable or potentially liable under 75-10-715(1)"

2. Page 1, line 27.

Following: "action."

Insert: "For a facility that involves a high degree of public interest or a potentially high health risk, the department may determine that a remedial action health study, including an assessment of health risk, may not be performed by a person that is liable or potentially liable under 75-10-715(1).

3. Page 5, line 4.

Following: "order"

Strike: "on consent"

4. Page 5, line 24.

Following: "of"

Strike: "the"

Insert: "an"

Following: "application"

Insert: "for a plan that would take 24 months or less to complete and within 60 days for a plan that would take more than 24 months to complete"

5. Page 5, line 28.

Following: "days"

Insert: "for a plan that would take 24 months or less to complete and within 75 days for a plan that would take more than 24 months to complete"

-End-

Testimony in Support of HB524
Presented to the House Natural Resources Committee
by the Department of Environmental Quality
February 17, 1997

Mr. Chairman and members of the committee, for the record my name is Denise Mills and I am the Remediation Division Administrator at the Department of Environmental Quality.

The Remediation Division administers the Comprehensive Environmental Cleanup and Responsibility Act, commonly referred to as the state superfund law. As such, the department will be obligated to administer the amended act, if passed. For this reason, the department appreciates that the entities required to clean up state superfund sites shared the concept of this bill and early drafts of it with the department and sought the department's input on the amendments.

House Bill 524 allows more flexibility and incentives for potentially responsible parties to conduct remedial actions before the department takes action and without administrative orders or consent decrees, and thereby has the potential to expedite cleanup at certain sites because less time will be spent negotiating orders and more effort will go toward cleaning up sites.

The department has prepared some amendments to the bill, one of which will extend the time for reviewing voluntary cleanup plans proposed for work to be completed between 24 and 60 months, and also to clarify certain language in the bill. Regarding the schedule for plan reviews, if a voluntary cleanup is proposed to take longer than 24 months, the department will need at least 60 days to review a plan for completeness and at least 75 days to review and approve or disapprove the cleanup plan. The existing law stipulates that cleanup is to be completed within 24 months, and allows the department 30 days for the completeness review and 30 days to approve or reject a voluntary cleanup plan.

Another amendment proposed by the department, would retain the department's ability to use discretion in determining whether the work should be performed by a responsible party. This discretion might be used, for example, for a site where there is a high degree of public interest or a potentially high human health or environmental threat, such as a site in Missoula where there is a sole source aquifer designation. In this setting, the department needs to have the discretion to lead and direct the work to see that public concerns are addressed and that there is good public participation.

Overall, the department supports House Bill 524. The amendments contain a framework that will increase the level of cooperation between the department and the parties responsible for remedial actions, and should provide for more expeditious remedial actions than might occur under an administrative order.

NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: 2/17/97

NAME	Yes	No	Comment
Rep. Bill Tash (VC Maj.)	✓		
Rep. Hal Harper (VC Min.)	✓		
Rep. Haley Beaudry	✓		
Rep. Aubyn A. Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. Doug Mood	✓		
Rep. Karl Ohs	✓		
Rep. Scott J. Orr	✓		
Rep. Bob Raney	✓		
Rep. Trudi Schmidt	✓		
Rep. Robert R. Story, Jr.	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila V. Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Douglas T. Wagner	✓		
Chairman Dick Knox	✓		

HOUSE NATURAL RESOURCES COMMITTEE

BILL NO: 524 SPONSOR: Anderson

Please leave prepared testimony with secretary.
Witness statement forms are available if you care to submit written testimony.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairman Dick Knox, on February 19, 1997, at
3:09 p.m., in Room 437

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Hal Harper, Vice Chairman (Minority) (D)
Rep. Haley Beaudry (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Doug Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney
Rep. Trudi Schmidt (D)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: none

Members Absent: none

Staff Present: Kathleen Williams, Legislative Services
Stephanie Braun, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 551 (2/14), HJ 20 (2/12),
HB 160 (2/12), HB 531 (2/12)
Executive Action: Hb 531 DO PASS (17-1), HB 160
DO PASS AS AMENDED (17-1), HB
551 DO PASS (16-2), HB 524 AS
AMENDED (12-6), HJ 20 Tabled
(18-0), HB 546 DO PASS AS
AMENDED (17-1), HB 50 Tabled
(13-5), HB 494 Tabled (12-6),
HB 450 Tabled (15-3)

Rep. Tash feels that the leadership is confident that the program will be funded.

Rep. Orr spoke out against the bill. He feels it was put together too quickly and he wishes that the amendments submitted by agriculture had been taken more seriously.

{Tape: 3; Side: a; Approx. Time Count: 0.1; Comments: none.}

Rep. Tash agrees with Rep. Orr's comments, but felt in the interest of time it was more important to get the Bill into the Senate and in the meantime iron out a few more amendments and introduce them in the Senate in the hopes that the Bill will be a better Bill.

{Tape: 3; Side: a; Approx. Time Count: 2.5; Comments: none.}

Rep. Harper doesn't feel the money is in the budget. Agrees with Rep. Tash that its important to keep the process moving, Larry Brown submitted 5 pages of amendments.

{Tape: 3; Side: a; Approx. Time Count: 4.3; Comments: none.}

Rep. Curtiss said she has a problem with amendment #5 feels it does a disservice to Agriculture.

{Tape: 3; Side: a; Approx. Time Count: 5.9; Comments: none.}

Rep. Tash appreciates the concern, feels that all parties need to collaborate and compromise. Rep. Tash assured Rep. Wagner that the other concerns would be addressed in the Senate process with Sen. Grosfield.

{Tape: 3; Side: a; Approx. Time Count: 6.3; Comments: none.}

Rep. Swanson still is fretting over the fiscal note and that its not in the Governor's Budget.

{Tape: 3; Side: a; Approx. Time Count: 8.9; Comments: none.}

Rep. Harper feels that the House floor will throw it to the Appropriations Committee. Reps. discuss that if the Committee puts the Bill into Appropriations the technical language will be stopped so it may be better to send to House floor.

{Tape: 3; Side: a; Approx. Time Count: 9.8; Comments: none.}

Rep. Tash discusses how some of the language in the Bill came about and Kathleen Williams gave a historical account of how the Advisory Group language came about.

{Tape: 3; Side: a; Approx. Time Count: 15.0; Comments: none.}

Motion/Vote: Question was called, DO PASS AS AMENDED, (17-1) motion carries, Rep. Orr voted "no"

EXECUTIVE ACTION ON HB 524

Motion: Rep. Orr; DO PASS

Amendments: hb052401.akw moved to pass #1,3,4,5

{Tape: 3; Side: a; Approx. Time Count: 25.0; Comments: none.}

Discussion: Kathleen Williams explains the amendments

Motion/Vote: Question was called on amendments #1,3,4,5; (18-0) motion carries amendments attached to the Bill

Amendments: Rep. Raney moved amendment #2 of hb052401.akw
{Tape: 3; Side: a; Approx. Time Count: 28.6; Comments: none.}

Discussion: Rep. Raney can't understand why health wouldn't be taken into consideration; feels that there needs to be a health risk assessment by a disinterested party. Rep Harper feels its crazy to let the party responsible determine their health risk assessment, he would want an independent company to perform the risk assessment.

{Tape: 3; Side: a; Approx. Time Count: 29.9; Comments: none.}

Rep. Orr resists the amendment, says he's not an attorney and Rep. Anderson is so he'll go with Rep. Anderson. Rep. Swanson question Rep. Orr's response and asks him to address the scenario that Rep. Raney presented.

{Tape: 3; Side: a; Approx. Time Count: 30.3; Comments: none.}

Rep. Orr replies that he doesn't think people have an intent to harm.

{Tape: 3; Side: a; Approx. Time Count: 31.8; Comments: none.}

Rep. Swanson feels that the story just heard about MT Rail Link saying they'll cleanup and not doing anything is pretty compelling.

{Tape: 3; Side: a; Approx. Time Count: 32.7; Comments: none.}

Rep. Raney feels he doesn't think it was intentional, just feels they didn't care.

{Tape: 3; Side: a; Approx. Time Count: 33.5; Comments: none.}

Rep. Story resists the amendment. Rep. Wagner doesn't feel the amendment is necessary.

{Tape: 3; Side: a; Approx. Time Count: 34.9; Comments: none.}

Rep. Harper shouldn't let the responsible party do the risk assessment.

{Tape: 3; Side: a; Approx. Time Count: 36.3; Comments: none.}

Motion/Vote: Question called for amendment #2, individual roll call vote, (8-10) amendment dies (Reps. Tash, Beaudry, Mood, Ohs, Orr, Story, Stovall, Taylor, Wagner & Knox voted against amendment #2)

Amendment: Rep. Harper suggests a conceptual amendment; sub sect. 6 would like to see this sentence added "Department's determination of incompleteness is not subject to appeal." He feels the Dept. needs the final word.

{Tape: 3; Side: a; Approx. Time Count: 42.4; Comments: none.}

Dialogue regarding this amendment continues.

{Tape: 3; Side: a; Approx. Time Count: 44.8; Comments: none.}

{Tape: 3; Side: b; Approx. Time Count: 0.1; Comments: none.}

Motion/Vote: amendment was moved DO PASS, motion dies 8-10 (Reps. Tash, Beaudry, Curtiss, Ohs, Orr, Story, Stovall, Taylor, Wagner & Knox vote against the amendment)

Motion/Vote: Bill moved DO PASS with attached amendment (hb052401.akw, #1,3,4,5); motion carries (12-6) Reps. Harper, Ellingson, Raney, Tuss, Schmidt, & Swanson voted against the bill (final attached amended document was given file name hb052402.akw)

EXECUTIVE ACTION ON HB 494

Motion: Rep. Ellingson, DO PASS

Discussion: Rep. commented then moved to TABLE

{Tape: 3; Side: b; Approx. Time Count: 7.4; Comments: none.}

Motion/Vote: vote 12-6 (Reps. Harper, Raney, Ellingson, Tuss, Schmidt, & Swanson voted against tabling the bill)

EXECUTIVE ACTION ON HB 450

Motion: Rep. Stovall, DO PASS

Discussion: Rep. Story thinks we need to remember and think about the concepts since Sen. Grosfield has a similar bill coming this way.

{Tape: 3; Side: b; Approx. Time Count: 9.9; Comments: none.}

Motion/Vote: Rep. Wagner moves to TABLE the bill, motion carries (15-3) HB 450 is Tabled (Reps. Curtiss, Taylor & Trexler vote against tabling the bill)



HOUSE STANDING COMMITTEE REPORT

February 20, 1997

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 524 (first reading copy -- white) do pass as amended.

Signed: Dick Knox
Dick Knox, Chair

And, that such amendments read:

1. Page 1, line 26.
Strike: "that"
Insert: "each"
Following: "person"
Insert: "that is liable or potentially liable under 75-10-715(1)"
2. Page 5, line 4.
Strike: "on consent"
3. Page 5, line 24.
Following: "of"
Strike: "the"
Insert: "an"
Following: "application"
Insert: "for a plan that would take 24 months or less to complete and within 60 days for a plan that would take more than 24 months to complete"
4. Page 5, line 28.
Following: "days"
Insert: "for a plan that would take 24 months or less to complete and within 75 days for a plan that would take more than 24 months to complete"

-END-

Committee Vote:
Yes 12, No 6.

2/20
ump
401014SC.Hgd

NATURAL RESOURCE COMMITTEE

ROLL CALL VOTE

DATE OF MEETING: 2/19/97

BILL NO. HB524

MOTION: move to pass as amended

NAME	Yes	No	
Rep. Bill Tash (VC Maj.)	✓		
Rep. Hal Harper (VC Min.)		✓	
Rep. Haley Beaudry	✓		
Rep. Aubyn A. Curtiss	✓		
Rep. Jon Ellingson		✓	
Rep. Doug Mood	✓		
Rep. Karl Ohs	✓		
Rep. Scott J. Orr	✓		
Rep. Bob Raney		✓	
Rep. Trudi Schmidt		✓	
Rep. Robert R. Story, Jr.	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson		✓	
Rep. Lila V. Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss		✓	
Rep. Douglas T. Wagner	✓		
Chairman Dick Knox	✓		

Total Vote: 12 Yes 6 No

Decision: HB524 passes as amend #1, 3, 4, 5 adopted

Amendments

Motion: amendment accepted _____

vote on amendment: _____

amendment file name: _____

NATURAL RESOURCE COMMITTEE

ROLL CALL VOTE

DATE OF MEETING: 2/19/97

BILL NO. HB 524

MOTION: DO PASS AS AMENDED (#1, 3, 4, 5)

NAME	Yes	No	
Rep. Bill Tash (VC Maj.)		✓	
Rep. Hal Harper (VC Min.)	✓		
Rep. Haley Beaudry		✓	
Rep. Aubyn A. Curtiss		✓	
Rep. Jon Ellingson	✓		
Rep. Doug Mood	✓		
Rep. Karl Ohs	✗	✓	
Rep. Scott J. Orr		✓	
Rep. Bob Raney	✓		
Rep. Trudi Schmidt	✓		
Rep. Robert R. Story, Jr.		✓	
Rep. Jay Stovall		✓	
Rep. Emily Swanson	✓		
Rep. Lila V. Taylor		✓	
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Douglas T. Wagner		✓	
Chairman Dick Knox		✓	

Total Vote: 8 Yes 10 No

Decision: _____

Amendments

Motion: amendment accepted

vote on amendment:

amendment file name:

adopted 1, 3, 4, 5
18-0
hb052401.2kw

Conceptual does not pass
8-10
Conceptual

*Vote Count above is
for Conceptual
Amendment*

NATURAL RESOURCE COMMITTEE

ROLL CALL VOTE

DATE OF MEETING: 2/19/97

BILL NO. HB524

MOTION: Orv DO PASS,

NAME	Yes	No	
Rep. Bill Tash (VC Maj.)		✓	
Rep. Hal Harper (VC Min.)	✓		
Rep. Haley Beaudry		✓	
Rep. Aubyn A. Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. Doug Mood		✓	
Rep. Karl Ohs		✓	
Rep. Scott J. Orr		✓	
Rep. Bob Raney	✓		
Rep. Trudi Schmidt	✓		
Rep. Robert R. Story, Jr.		✓	
Rep. Jay Stovall		✓	
Rep. Emily Swanson	✓		
Rep. Lila V. Taylor		✓	
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Douglas T. Wagner		✓	
Chairman Dick Knox		✓	

Total Vote: 8 Yes 10 No

Decision: _____

Amendments

Motion: amendment accepted adopted

vote on amendment: 18-0

amendment file name: hb052401.2kw

(#1, #3, #4, #5)

Orv moved →

amendment dies

8-10
hb052401.2kw

#2

Vote count above
is for amendment
#2 only
document file name
hb052401.2kw

NATURAL RESOURCE COMMITTEE

ROLL CALL

DATE OF MEETING: 2/19/97

NAME	Yes	No	Comment
Rep. Bill Tash (VC Maj.)	✓		
Rep. Hal Harper (VC Min.)	✓		
Rep. Haley Beaudry	✓		
Rep. Aubyn A. Curtiss	✓		
Rep. Jon Ellingson	✓		
Rep. Doug Mood	✓		
Rep. Karl Ohs	✓		
Rep. Scott J. Orr	✓		
Rep. Bob Raney	✓		
Rep. Trudi Schmidt	✓		
Rep. Robert R. Story, Jr.	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson	✓		
Rep. Lila V. Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss	✓		
Rep. Douglas T. Wagner	✓		
Chairman Dick Knox	✓		

Amendments to **House Bill No. 524**

First Reading Copy

Requested by **Rep. Beaudry**
For the Committee on Natural Resources

Prepared by Kathleen Williams
February 19, 1997

1. Page 1, line 26.

Strike: "~~that~~"

Insert: "each"

Following: "person"

Insert: "that is liable or potentially liable under 75-10-715(1)"

2. Page 1, line 27.

Following: "action."

Insert: "For a facility that involves a high degree of public interest or a potentially high health risk, the department may determine that a remedial action health study, including an assessment of health risk, may not be performed by a person that is liable or potentially liable under 75-10-715(1)."

3. Page 5, line 4.

Strike: "on consent"

4. Page 5, line 24.

Following: "of"

Strike: "the"

Insert: "an"

Following: "application"

Insert: "for a plan that would take 24 months or less to complete and within 60 days for a plan that would take more than 24 months to complete"

5. Page 5, line 28.

Following: "days"

Insert: "for a plan that would take 24 months or less to complete and within 75 days for a plan that would take more than 24 months to complete"

Amendments to **House Bill No. 524**
First Reading Copy

Requested by **Rep. Beaudry**
For the Committee on Natural Resources

Prepared by Kathleen Williams
February 20, 1997

1. Page 1, line 26.
Strike: "that"
Insert: "each"
Following: "person"
Insert: "that is liable or potentially liable under 75-10-715(1)"
2. Page 5, line 4.
Strike: "on consent"
3. Page 5, line 24.
Following: "of"
Strike: "the"
Insert: "an"
Following: "application"
Insert: "for a plan that would take 24 months or less to complete and within 60 days
for a plan that would take more than 24 months to complete"
4. Page 5, line 28.
Following: "days"
Insert: "for a plan that would take 24 months or less to complete and within 75 days
for a plan that would take more than 24 months to complete"

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 14, 1997,
at 4:00 P.M., in Room 405.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: **HB 524**
HB 154

Executive Action: **NONE**

HEARING ON HB 524

Sponsor: REP. SHIELL ANDERSON, HD 25, Livingston

Proponents: Mr. Leo Berry, Attorney at Law, Browning,
Kaleczyc, Berry and Hoven.
Ms. Denise Mills, Remediation Division
Administrator of the Dept. of EQC, State of
Montana.

Opponents: Mr. Nielsen, Acting Director of Environmental
Health, Missoula City Health Department,
Missoula, Montana.
Mr. Jim McGrath, Missoula City Council

Opening Statement by Sponsor:

REP. SHIELL ANDERSON, HD 25, Livingston. I bring to you a bill that we think is put together by a consensus of environmentalists, the Department of Environmental Quality and industry. It changes the way that we go about cleaning up unintended releases into the environment.

This bill gives a responsible party, for an environmental release, the opportunity to do their own clean up before the Department steps in with its court orders. It gives the person who is liable, or potentially liable, the opportunity to expeditiously perform appropriate remedial action. As you can see throughout the bill there are references to administrative orders on consent which can be entered into by the responsible party and the Department. It develops a scheme of facilitating cleanup as opposed to the adversarial scheme.

Proponents' Testimony:

Mr. Leo Berry, Browning, Kaleczyc, Berry and Hoven, appeared on behalf of Pegasus Gold Company and Rhone-Poulenc (a Chemical Company located outside of Butte, Montana). He requested REP. SHIELL ANDERSON to introduce this legislation. The purpose can pretty well be found in the Statement of Intent on Page 1. The purpose of the bill is to make sure the potentially liable parties, those people who are responsible for clean up, are given the opportunity to clean up before the Department takes action. In the past, we have all assumed that was the intent of the original Superfund Law. At times that has been drawn into question by some of the attorneys in the Department of Environmental Quality, so we wanted to clarify the legislature's intent. If the private party is willing to step forward and handle the cleanup in a responsible manner, still under the control and approval of the agency, they indeed would give them that opportunity.

The second change is found on page 4 on lines 8 and 9. In the past, when a private party enters into an agreement with the Department and it voluntarily stepped forward to do a clean up, the law requires that, the agreement be filed with the District Court. There is only one way to file something with the District Court and that is by a law suit. The District Court doesn't accept agreements. So there is an implication in the law that it was necessary for the Department to file an action. If you have a private party who is willing to step forward and do it voluntarily and in an expeditious manner, a law suit should not be necessary. We struck that requirement. When you enter into an agreement with the agency, either a voluntary agreement or a consent agreement, that no longer has to be filed with the District Court.

The third thing that the bill does, is found on page 5, lines 9 and 10. It provides an appeal for the Board of Environmental Quality, if the Department does not think that the site is eligible for a voluntary clean up. You will notice that the

change is contained in Section 3. Some of these sites have a criteria for determining when a site is eligible for a voluntary cleanup plan. Currently if the Department determined that a site was not eligible for a voluntary cleanup plan, the decision was final. We requested that the bill include a provision that if the Department denied a site for voluntary cleanup eligibility, there could be an appeal to the Board of Environmental Quality to have them review the Department's decision.

The fourth change in the law is found on page 6, line 26. The Voluntary Cleanup Act, that was passed last session in SB 382, required that any site be cleaned up in a 24 month period. We have discovered, by working on sites during the interim, that there are several of these sites that really should be handled under a voluntary cleanup program. Sometimes there is difficulty accomplishing this in a 24 month period, especially if there are ground water problems. We have requested that that be extended to 60 months, which would be five years. The Department still has the authority to approve a time table for the cleanup of a site. When you submit an application for one of these sites, you need to include a time table for cleanup which the Department needs to approve. It might be three or four years. Two years, given the construction season in Montana, was too restrictive. The Department requested they be given more time to review those sites. That change is found on page 5, wherein the Department has 30 days to review a plan that would take 24 months or less and 60 days for a plan that would take more than 24 months.

Unfortunately, we missed one change that should be made to the bill which is found on page 7, line 4, where you see a reference to 24 months. The Department's approval plans, under the bill as currently written, would expire after 24 months. If we allow sites to be cleaned up over a 5 year period, when approved by the Department, then this should be changed to 60 months also. We would recommend that an amendment be included in the bill to change that to 60 months.

Ms. Denise Mills, Remediation Division Administrator of the Department of Environmental Quality, State of Montana. The DEQ administers a Comprehensive Environmental Cleanup and Responsibility Act (CECRA) and will administer the amended act if it passes. For this reason we appreciated that the proponents shared the concept of this bill, that early drafts of it were provided to DEQ, and that our input was sought on the amendments to CECRA.

House Bill 524 provides explicit flexibility for potentially liable persons, or PLPs, to conduct remedial actions without administrative order consent decrees. This flexibility should foster more cooperation between DEQ and PLPs and should provide for more expeditious remedial actions that might occur under an administrative order which could take months to negotiate. This explicitly allows flexibility for a PLP to proceed with remedial actions without an administrative order and retains the DEQ's ability to use discretion on a case-by-case basis in determining whether the work should be performed by a PLP. This

discretionary authority is already in the law and the DEQ will continue to use this authority if there is a concern that a PLP cannot do the work properly and expeditiously or effectively address public concerns. To clarify the DEQ's administration of CECRA in the past, administrative orders have been issued for only 13 of more than 200 CECRA sites and orders for three of these sites were recently negotiated. Orders have been issued for only the highest priority sites in Montana, each of which poses a potential threat or a clear threat to human health and the environment. Most are in communities with quite a public interest and concern for preventing exposure to contaminants from Superfund Sites. In most cases PLPs have been and will continue to be given an opportunity to initiate remedial actions. Occasionally, the DEQ will determine whether the PLP should conduct remedial action or if the work should be done by the Department.

In expressing support for this bill, it is important to clarify the DEQ's expectations for remedial actions by a PLP. To receive a no further action determination from the DEQ on Superfund Sites, or potentially de-listing of the site, as is desirable in real estate transfers, or land development projects, or to remove the stigma of the site being listed from property ownership, widely accepted methods must be used to site characterization, data analysis and remedial design. Remedial measures which are put into place must be protecting the standards both for human health and the environment.

Opponents' Testimony:

Mr. Peter Nielsen, Acting Director of Environmental Health, Missoula City Health Department, Missoula, Montana (EXHIBIT #1), spoke in opposition to the bill. We are able to support the majority of the bill but are opposed to one provision of the bill which allows the responsible party to proceed with remedial actions on their own. Our problem lies in the definition in the Act which includes health studies and health risk assessments. Health risk assessments are used to determine the nature of cleanup and the degree of cleanup that must be done at the site. Therefore, there is incentive there for a company that used to pay for a cleanup to do the Health Risk Assessments that are going to determine how much cleanup is required and how much money they are going to have to spend to cleanup the site. Owners of facilities have a lot of incentive to do those studies. In our county we have a total of 21 sites. Only a few of those are of sufficient magnitude that they will require these health risk assessments. So, for most sites this really isn't an issue. But for those that it is an issue, it is important to the health of the members of our community. We feel that it is very important that a fairly impartial party review these Health Risk Assessments that will determine the nature of the cleanup. The costs of cleanup can be very high, but the cost of not cleaning up a property can also be very high especially if the facility is closed and residual contamination is left in place which present some barriers for the full use of the property.

We have a site in our community, the White Pine Sash Site, which is a 41 acre site. It is a recently closed property located in an out-of-way residential neighborhood on the north side. It's prime property for re-development at this time for a variety of reasons including manufacturing, commercial, and residential. If the cleanup of the site results in substantial residual contamination being left in place, that is going to deter potential investors. It is going to deter the financial institutions. They are required to participate in that project, and that is going to hurt the community. So we suggest that the bill simply be amended to exclude Health Risk Assessments from those remedial actions which may be performed by liable parties at State Superfund Sites. With that amendment, we would be pleased to support the remainder of the bill.

Mr. Jim McGrath, Missoula City Council, stated he brought with him a letter from the Westside and Northside Neighborhood Associations, those are the two neighborhoods on either side of White Pine. He read the following:

"Dear Senate Natural Resources Committee:

The residents of the Westside and Northside Neighborhood would like to comment on HB 524 which revises SuperFund Remedial Law. The bill has already passed the House. House Bill 524 would allow any potential responsible party, of the SuperFund Site, to hire their own consultant to determine the risk to human health, without Risk Assessment evaluation of the cleanup at a Site. Mr. Peter Nielsen, Missoula's Acting Environmental Health Director, says, 'It is better to leave the Health Assessments in the hands of the State Department of Environmental Quality with the consultants responsible to the State.' We agree.

White Pine Sash is contaminated with both pentachlorophenol and dioxin, known carcinogens. This pollution is in the surface soil which blows around the neighborhood. It is also in the subsurface soil on site and the plumenary stems beneath the site to the sole source aquifer. The citizens of the Northside and Westside want to cleanup based on protection of our health and that of our children, not the owner's willingness to pay. White Pine Sash has already packed up and left town. The site is abandoned. The company publicly pledged to clean the site, now that it is being called into question by this bill and those responsible for correcting it. It's not going to be cheap or easy to clean this site. However, the cleaner it is, the easier it will be to attract new businesses and put another business on our tax rolls. Our neighborhoods are working to develop plans for that site that will make it a future benefit to the neighborhood, the city and local business.

Two developers have already met with members of our neighborhoods and expressed interest in this site. Back in December of 1994, the local Health Department had to go to the State Department of Health and Environmental and Sciences with a list of complaints about the quality of work that White Pine Sash has contracted for doing at the site. At that time the Health Department asked

DHES, now the Department of Environmental Quality, to oversee the cleanup rather than leave it in the hands of the Department of Agriculture. We do not want the cleanup botched.

Signed Kathy Szvetcz, President of the Westside Neighborhood Association, and Bob Oats, President of the Northside Neighborhood Association."

As I said, White Pine Sash is in the middle of my district. I represent 8,000 people in the City of Missoula. White Pine recently closed its doors due to changes in the window industry, and we were all sorry to see those jobs go. We have been undertaking discussions about how we can bring some of those jobs back in and redevelop that site. The two neighborhoods around it are traditional working class neighborhoods. They like business on the edge of the neighborhood. Many of the workers that worked at the mill lived in the neighborhood, right next to it. It's been a long tradition. Those neighborhoods are in the process of a renaissance of sorts. I'm really excited to see my neighbors getting together and trying to pull together, gather pride in a neighborhood that has been on decline and pull themselves up by their bootstraps. It's has been an exciting process. Currently they are undertaking a neighborhood planning process and they are looking at what would be a good use of that site. Many would like to see another business move in, or a mixture of uses. Some potential parties have talked with the neighborhood about coming in and reinvesting, as is mentioned in this letter. It is important to understand that the neighbors here welcome business and opportunity and welcome jobs from industry. They would like to have that tradition continued even as the course of the county changes.

We are also exploring the new Environmental Protection Agency Brownfield Program which helps package redevelopment enterprises to encourage them to move into sites that have been abandoned and contaminated just like White Pine. It is a very new program at the federal level. It is very encouraging. My concern is that without the assurance of state and public assessment, any evaluation of future parties will be unwilling to take the risk of moving back into a site. A vacant, abandoned ramshackled and potentially contaminated site in the middle of the community, will not help this neighborhood and this community to develop.

Regardless of what happens at White Pine, I would be concerned about future sites around the State, whether it be in Billings or Miles City or Lewistown. Although our economy will be changing constantly, new businesses will leave and new businesses will come in. So we encourage you to make the amendments that Mr. Nielsen suggested, just to give the assurance, so that we can help some new businesses come into these sites and assure that the public is protected.

Questions From Committee Members and Responses:

SEN. VIVIAN BROOKE commented there has been a lot of testimony about the effect this will have on White Pine Sash land and asked **Mr. Berry** to respond.

Mr. Berry. The Missoula White Pine Sash site is subject to a unilateral order issued by the Department about two years ago on March 17, 1995. Part of that order, about on page 12, states "The Department of Environmental Health and Environmental Sciences will prepare all necessary draft and final risk assessments for the Missoula White Pine Sash." So it is my interpretation of this order, that the Department will prepare that Risk Assessment. It's my understanding that they are currently undertaking that process at this time and that the Missoula White Pine Sash facility would be unaffected by this piece of legislation.

SEN. BROOKE asked **Mr. Nielsen** what his perception was of this bill and also the order that White Pine Sash is under now?

Mr. Peter Nielsen. It is my understanding that White Pine Sash has made some considerable effort in the past to obtain permission to do this assessment and that was successfully resisted by the State. We thought that was a good position to support. It is not the only site in the community in which the remedial risk assessment has been done, but it certainly is one that's probably important and on our mind at this time. There is an order and I guess I would question whether or not it could be applied retroactively and modified, in an existing order. I've been told today, that it would not. That doesn't necessarily give us that full accounting of being real sure that that is going to be the case in Missoula. That's the concern. That the order may be modified. It is just now at the stage of cleanup where the remedial investigation has been completed and the risk assessment is about to be heard. It is not my understanding that any substantial activities along these lines have taken.

SEN. DALE MAHLUM asked **Mr. McGrath** if he understood him correctly in that White Pine Sash had pulled out and he didn't know where they were currently located?

Mr. McGrath responded, I think you misunderstood me slightly. What I said is they have closed that mill and are no longer operating.

SEN. MAHLUM commented that if he didn't know where to contact them, he could probably go to **Mr. Berry**, because he sounds like he knows.

Mr. McGrath. The point is that it is no longer an operating plant. The local agents are no longer there and of course the jobs are gone, so that is the primary concern and the facility is not able to be used right now. It's just empty buildings and we'd like to see that situation changed. I didn't mean to imply that we can't find the major company headquarters.

SEN. FRED VAN VALKENBURG asked Ms. Mills if the White Pine plant cleanup here is subject to an Administrative Order of the Department?

Ms. Mills, DEQ responded, the site is under Remedial Order by the Department.

SEN. VAN VALKENBURG asked, does that order provide that the Health Risk Assessment be done by the Department of Environmental Quality?

Ms. Mills, DEQ answered, that's correct. There's explicit language in the order that provides for the Department to conduct the Health Risk Assessment on this particular site.

SEN. VAN VALKENBURG questioned, would the passage of this bill change that at all, or make it possible for White Pine to have the Health Risk Assessment done by anyone other than the Department?

Ms. Mills, DEQ answered that the Department's interpretation of the bill is that this bill doesn't rescind any part of that order. Our understanding is that if any part of the order were to be put out of effect, it would actually have to be repealed. My understanding from John North, is that there could be a statement of intent introduced into the bill to keep that protection in there.

SEN. VAN VALKENBURG asked, MR. CHAIRMAN, in that regard maybe Mr. North may be able to answer this other on their behalf. But, if we were to amend this bill to put in an applicability clause in it, so to the effect that it would not apply to any sites in which the Department currently had an administrative order in effect requiring the Health Risk Assessment to be done by the Department, would that present any problems for the Department?

Mr. John North, Chief Legal Council for the Department of Environmental Quality, State of Montana answered, no.

SEN. VAN VALKENBURG continued, are there any sites that the Department currently has jurisdiction over, other than the White Pine Sash site in Missoula, that might be caught up in such an applicability clause?

Ms. Mills, DEQ answered, yes. I'll just read a list of the sites that we currently have orders on, action sites that have not been closed. Big West Oil, which is a high priority site, we have a unilateral order on.

CHAIRMAN GROSFIELD asked, could you tell us what communities these are located in too?

Ms. Mills, DEQ responded as follows:

Big West Oil Refinery is in Kevin.

The Bozeman Solvent Site, of course in Bozeman. We have a unilateral order on that for an alternate water supply system. That order was issued to the City of Bozeman.

The Burlington Northern Havre Fueling Facility. We have recently negotiated an administrative order on that site, it hasn't been signed yet, but they've submitted a work plan in February and we expect that order to be signed in about two months. The work plan will be attached to the work plan approved by the Department.

The Burlington Northern Livingston Facility. That work is being done under a consent decree.

The Burlington Northern Missoula Fueling Facility. That again has an administrator order that was only recently negotiated with the Havre order.

The Burlington Northern Whitefish. This has the same status as the Missoula and Havre Facility.

The Comet Oil Company, Billings. We have an Administrative Order there.

The Missoula White Pine Sash. We have a unilateral order. That is the maximum priority site in the State.

Precious Metals Plating Facility in Bonner has a unilateral order.

Texaco-Sunburst Works Refinery on the high line has a unilateral order issued to it.

Currently given that site list and sites that we are doing Risk Assessments on, there are only three - Missoula White Pine Sash, Big West Oil Refinery and Bozeman Solvent Site. For the Bozeman Solvent Site, we have a memorandum of agreement with the City of Bozeman for the work. An order was not issued and that agreement provides that the City would do the remedial actions and as correctly stated by Mr. Neilsen in his testimony, remedial action doesn't address the assessments. At this point the Department has proceeded with developing a scope of work for the Risk Assessment and I don't believe that there has been any objection to that work being done. That's probably the only site that might be affected by this bill. But at this time we think there's general acceptance that the Department would do the work in Bozeman. There is a large community effected by the pollution there and we think in that particular case we would use our discretion to anticipate that we would do the work rather than the City.

SEN. VAN VALKENBURG stated, so as I understand it, there are only three of these sites in the State where Health Risk Assessments are required?

Ms. Mills answered, I have a list of eight sites for Health Risk Assessments. We currently have three that are either going to happen very soon, or are being done. There are five additional sites where the Risk Assessments have been completed and those were completed by the Department. There are an additional, actually four sites, where Risk Assessments have been or will be completed under an agreement with a PLP. Those are the BN Facilities. The BN Mission Wye facility that the PLP did the work with DEQ oversight and that was mutually acceptable. We are giving them an opportunity to do the work on the Whitefish Facility.

SEN. VAN VALKENBURG asked, who did the work?

Ms. Mills responded, the principal, or the potential liable party, Burlington Northern.

So given those numbers, we have 12 sites that Health Risk Assessments have been required on. Again, those are sites that we view as having a high health risk, or if there appears to be a risk, we need to evaluate it. For the others, we are using what might be referred to as prescriptive numbers. This could be the federal water drinking standards, or the Montana WQB7, the Water Quality Standards for the State of Montana, soil cleanup standards which might be determined as various health risks, or anticipated land uses.

SEN VAN VALKENBURG. With respect to **Mr. Nielsen**, and counsel and **Mr. McGrath's** concerns as to the appropriateness of the PLP doing or contracting out Health Risk Assessment to some consultant, apparently the Department is not concerned about that. In the same vein, I guess that these Missoula people are. Why is that?

Ms. Mills answered, as I explained in my testimony, and I believe that **Mr. Berry** expressed as well, although this bill gives an explicit opportunity, we've been giving this opportunity to PLPs, but this opportunity makes it more explicit in the law, to do remedial actions and Risk Assessments. The work has to be done and the language in the bill is properly and expeditiously. The Department will continue its oversight of that work. If we received a report on health risk assessment, for example, that for some reason has a data gap in it, or hasn't addressed an exposure pathway, maybe it hasn't addressed drinking water that's contaminated that is an obvious pathway at a site. We would probably do one of two things (1) provide comments to that PLP that there are these inadequacies in the report and they need to be addressed. These reports also go out for public comments, so when we receive comments from the public there is generally a 30 day comment period, and we need to be responsive to that public comment. (2) Another alternative that the Department might take if the risk assessment which has been submitted to us is clearly inadequate, or we don't feel for some reason that this party is able to do the work properly or address the concerns from the Department, we may decide at that point it needs to do the work and take it back. I don't believe this bill takes away that authority from us.

SEN. VAN VALKENBURG asked if there were any significant cost or policy differences to the Department as far as reviewing the work that the PLP has done with regards to the risk assessment as opposed to doing it itself?

Mr. Mills answered, as far as the costs go, when the Department does the work, it generally hires a contractor anyway and we have people on staff who can help crunch numbers and help do some of the write ups. We do get a peer review by a contractor, and they help us to make sure that the numbers are scientifically accurate. So there's a cost if we are doing the work. If we are not doing the work and DEQ is still doing the oversight, I believe that we would still be retaining a contractor, particularly on a site like Missoula White Pine Sash or Bozeman Solvent Site where there's a large affected public and there are health risks involved in the people drinking the water. We would want to make sure that we have all our ducks in a row, and we would continue to retain a contractor. Now what the difference of the costs would be in an oversight roll versus actually doing the work, I am not prepared to respond to that.

SEN. MIKE TAYLOR. Obviously you don't have concurrence with this bill. How did you arrive at the 60 months versus 24 months, voluntary cleanup ?

Ms. Mills answered, that was actually in the draft bill proposed by **Mr. Berry** and his clients. We discussed that and debated whether maybe it should be three years, or four years, 60 months is just about five years and there is actually a concession made in the bill. There is a clause in the bill, on page 5 of the bill, subsection 3, which was one of the concessions that **Mr. Berry** made when we discussed this. It provides that, "The Department may determine that a facility that is potentially eligible for voluntary cleanup exhibits complexities regarding protection of public health, safety and welfare." That was actually a part of the bill that was struck out of an early draft. There was concern about sites that might take longer to cleanup, and that was one of the reasons that the clause was put in there. We preferred the clause not be stricken, and even if a site is supposed to take five years to cleanup, there might be a phase process to get all the way through into the mountain areas, and by submitting a plan over five years, rather than a plan over two months, might enable a party to bring in a more comprehensive process. Lets say instead of a more general overview of what might happen and how to link the pieces together better than a plan that does one step this year under a 24 month plan and the next plan covers the next step of the process. So going back to the complexities, that was where we wanted to be able to retain our discretion and we didn't feel that it was appropriate for volunteer cleanup, we would advise the PLP of that determination.

SEN. TAYLOR responded, you say you feel comfortable with the language that is in there now, is that what you are saying?

Ms. Mills answered, we do. **MR. CHAIRMAN** and **SEN. TAYLOR**, that was the reason that we proposed additional time for the

Department to be able review a plan that might take longer than 24 months.

SEN. BILL CRISMORE asked, could you just explain to me about the White Pine Sash Site. What are we talking about here? I mean does anybody know this Site? What kind of contamination are we talking about?

Ms. Carolyn Fox, Remediation Division of DEQ, State of Montana. The Missoula White Pine Sash was a wood treating facility that used pentachlorophenol for a very brief period of time along with some petroleum based solvents. The contamination problems are in the subsurface soils. There is petroleum contamination, as well as pentachlorophenol and dioxin that is associated with the impurities in the pentachlorophenol manufacturing. There is also ground water contamination. There is a drinking water aquifer that has not been impacted with the contaminates from the Site, but above that there is a push off portion that has been impacted with these contaminates.

SEN. TAYLOR commented, so we are talking about removing dirt.

Ms. Mills answered, we are probably talking about more than just removing dirt, because there is some ground water contamination at the site. At this point, it is not in the aquifer that is used for drinking water. So we are talking about both soil cleanup, as well as ground water cleanup. That's the purpose of the studies that are going on right now, to determine the extent of the contamination and find a way to clean it up.

SEN. TAYLOR asked, does the State bond companies like this, if there is a potential problem with the materials that could be harmful?

Ms. Mills responded, the work is being done by consultants for the responsible party. It is an issue for the State to be involved in prodding those parties. We have identified who is liable for the site. They have gone out and are basically at almost a completion of their investigation phases, and so it has not become a larger issue.

{Tape: 1; Side : b; Approx. Time Count: 4:20 P.M.}

SEN. VAN VALKENBURG asked for a more overall back ground about the work. What are we talking about with the White Pine Site? Is it something that happened 40 or more years ago, when there were underground tanks involved?. I think when **SEN. TAYLOR** asks, "does the State require bonding?" he means, that when White Pine went into business, 30, 40, 50 years ago, and starting doing this, did we have some kind of bond in place that would require them to take care of any problems that could come about as a result of the business that they were in, is that clear?

Ms. Fox responded, when most of these facilities were operating, there were no bonding requirements. There are some of them that have insurance provisions and they have gone to their insurance

companies to get some of their costs reimbursed, but my general observation is that there is no bonding reclamation requirements for these historical contaminated sites.

SEN. BROOKE asked, if this bill becomes law and we discover what we discovered with White Pine Sash, what would happen?

Ms. Fox answered, her understanding is the law gives the opportunity to responsible parties to do the work first. In that respect, it is kind of been the way things have been since this law was passed in 1989. I don't see where a responsive party's liability to cleanup sites changes with this legislation.

SEN. BROOKE stated, what I understand is, with this piece of legislation, the Department would no longer issue unilateral orders, is that correct?

Ms. Fox responded, what this legislation says, is that we should give the opportunity to back up work done by letter first before issuing orders. That has been the norm more than the exception. We have very few orders. We have issued orders mainly on very high priority sites and this is saying, give the opportunity by letter first, before issuing orders. So that is the change here. Most of our sites are actually not under order, but the very large big impact sites are.

SEN. BROOKE commented, if in fact, you offered the White Pine Sash owners the opportunity to go forward with this on their own, without the order and then they left, what would we have to hold them to that responsibility?

Ms. Fox answered, I believe we have enforcement vehicles that are in CECRA to go after those parties. The question becomes, will they still be there, when we go after them? That's always a question that's out there. We can issue unilateral orders, when consent orders don't work out. We have the ability, under our State SuperFund Law, to go in and do the work, if a company has not done it properly. That doesn't get at the issue. There is always a possibility even in the existing scenario without these changes that a company may go bankrupt. That's the time when the State starts having to consider finding a way to cleanup those sites, when there is no longer funding. We have very strong enforcement tools in the law, and those particular sections of law are not being changed here.

SEN. BROOKE stated, we are now in the process of changing joint and several liability and given the scenario, if there is a high profile cleanup site, or SuperFund Site to cleanup and then that particular piece of property is up for sale and a new owner comes in, would that new owner take on any liability?

Ms. Fox answered, there is a possibility that somebody who buys a contaminated site can also be held liable because one of the categories of liable parties, is current owners. There's a way that they can defend themselves through an innocent land owner defense. There is another way that some of these prospective

purchasers can actually enter into agreements with the Department concerning their liability. Sometimes there is an exchange. Maybe they agree for \$30,000.00 that they are reducing their liability. Those agreements are just now starting to come out at the federal level, we don't have one in place at the State level, but that's an alternative for a prospective purchaser. With the changes in strict several and joint liability, if it were to go through the allocation process that's in that bill, SB 377, the current owner who buys that property may have less liability in that allocation process than they would without that allocation process. Because the factors for liability are broad based in that allocation process. So that's what that other bill, SB 377, might have to do with the current owner, bare liability may be less if that site is undergoing the allocation process.

SEN. BROOKE questioned if she saw any concern with the fact that, at this point in time, the 41 acres in Missoula is up for sale? We have identified the responsible party and they are under an order. Does a new owner take any of that responsibility at all, or liability?

Ms. Fox responded, the timing of this question is very timely. We got a call from the prospective purchasers of the Missoula White Pine Sash, yesterday. They would like to enter into a prospective purchaser agreement to protect their risk and we are talking to them. The only thing that would change Missoula White Pine Sash and Doerr Company's ability, is if they were to go bankrupt. They are a company. We have no reason to believe that they will not continue with their obligations to investigate and cleanup that site.

SEN. TAYLOR. If they go bankrupt and somebody else buys the land, are you telling me that they're responsible if you don't give them a waiver?

Ms. Fox answered, there are four categories of liable parties. One is the current owner. There is a defense of the current owner before they buy the property they can go through and make sure it is not contaminated before they buy it. But if it is contaminated, yes, they can be held liable in the future. They could be noticed. I have to say, although some people may say the record is that most current owners are held liable, the record is, that even though this is on the books, the people who have made the mess are the entities that are cleaning it up. So where a company could go bankrupt and sometimes the other parties have to pick up their share, or what's being anticipated in SB 377, is that the State will pick up the share of the bankrupt and defunct parties.

SEN. TAYLOR said, with that logic, it makes a good business practice to set up a shell corporation and go bankrupt. When you don't have to do it, obviously.

SEN. BROOKE asked Ms. Mills, when you were answering the question to SEN. VAN VALKENBURG, did you say that, Mr. Berry's clients initiated this bill?

Ms. Mills answered, we were approached by Mr. Berry at the inception of this bill back in December and I guess I may have spoken out of turn, but I made the assumption that he was representing a certain client and an interest, Mr. Berry might be a better person to answer that.

SEN. BROOKE. This is not a bill that's coming from the Department of DEQ?

Ms. Mills responded, that is correct.

CHAIRMAN GROSFIELD commented that this bill amends a couple of temporary sections of law, I believe it's SB 382, that we passed last session, that expires in the year 2001. One of the things that we are doing, is extending the authority of this bill from 24 to 60 months, which goes past the year 2001. Is the talk of extending that voluntary cleanup authority that we passed last session beyond 2001, and is the Department looking at that. How is this going to play?

Mr. North answered, that's not an issue that I thought about at this point. I would need to think about it, before I could give you an answer.

CHAIRMAN GROSFIELD. Is the Department finding that this program is working? Is it a good program? Are we getting cleanup as the program was intended?

Ms. Fox answered SEN. GROSFIELD, since this law was passed, we have received 13 voluntary cleanup applications. Eight have been approved. I can't remember how many are conducted of those eight approvals. We have an interest in 5 more sites at this time. Some draft applications are in. I would say it's been a successful implementation.

CHAIRMAN GROSFIELD stated, are you suggesting, that without the bill, you would not have had those 13, plus 8 more prospective?

Ms. Fox responded, that would be speculation for me to guess. We did voluntary cleanups before this law was passed with a little bit of a central process. This made the process known. I think it gave it more publicity. As to the numbers, we had a lot of voluntary cleanups, even before the law was passed.

CHAIRMAN GROSFIELD asked Mr. Berry to comment on the 60 month versus the termination date.

Mr. Berry answered, I have thought of that question. It's no different than if you left it at 24 months and somebody came in and applied in the year 2000 and the Department approved a plan if it had a 24 month cleanup period. My interpretation of the section would be that sites that are eligible under this Act that

have submitted written approvals and have approved plans, will have five years to clean those up, under those approved agreements with the Department, regardless of whether the law expires at that time. They will have been submitted and approved during that period of the time table established. I was involved in the drafting of SB 382 last time also, which created this voluntary plan. The Department wanted to make it temporary, that was one of the concessions industry gave to see how it did work. Hopefully it is working and if that continues, we would again approach the Legislature to make a voluntary program permanent in the law.

CHAIRMAN GROSFIELD commented that **REP. HALEY BEAUDRY** offered some amendments in the House Natural Resources Committee, several of which were adopted, but one of which wasn't. The one that wasn't goes to the issue raised by the people from Missoula, basically saying that in the case where there's any significant high degree of public interest or potentially high health risk that maybe we don't want the PLP to be helping with the Health Risk Assessment. What is your response on that amendment?

Mr. Berry responded, it was a late amendment and I could actually not contact my clients prior to the hearing on the bill. Since that time, I have had a chance to contact my clients. They are opposed to the amendment for this reason. The intent of the bill is to allow the PLPs to do the work. When you have one of these sites, you do a ground water assessment, you do an air assessment, you do a soil assessment, and you do a Health Risk Assessment on bigger sites, sites that may have a Health Risk associated with that. All that work, regardless of its nature, is done with the oversight of the Department. The Department has to approve the work plans, including the work plan for Health Risk assessment. It has to approve the work once it's done and as **Ms. Mills** indicated, if the Department has problems with the work that is done, or if the public comments and raises a point that the Department has a problem with, they can instruct you to go back and redo that part of the work. In addition, if they feel that it is so faulty, they can do their own Health Risk Assessment, or their own ground water assessment or any other part of the plan and under any of those scenarios, the private party pays for the State doing that work, both for the oversight and for actually doing the work. So I would disagree with **Mr. Nielsen** that there is an incentive somehow to do a less than good job. Because the risk the PLP runs in that instance is to pay for it twice. So I don't share his evaluation of how a private party would do that, because they will probably end at exactly the same place, only pay twice for it. The Department has to ultimately approve the work and has the resources to review the work.

There's nothing in this bill that either changes the liability of the party, or the ability of the Department to issue orders on sites where a party is not voluntarily cleaning up the site. There is nothing in this law that changes the liability of a party.

If a private party does not properly cleanup a plan, or a site, or does not perform properly, there is nothing in this bill, that prevents the agency, from either issuing an order, or cleaning up the site itself. This merely gives the private party the chance to do it right first. If they don't do it right, the agency can then step in.

CHAIRMAN GROSFIELD asked Mr. Simonich if he was comfortable that the Department has the staff and budget to check these things out?

Mr. Mark Simonich, Director, Director of the Department of Environmental Quality, answered that he was satisfied. He didn't know that the Department would approach their view of a Risk Assessment differently, whether we were responsible for doing it and hiring a contractor to do it, or whether they were anticipating the PLP doing it and then submitting it to them. They are still going to work with a contractor. They currently are in between toxicologists. But generally its the work that they have to do regardless and this bill doesn't change that all.

Closing by Sponsor:

REP. ANDERSON clarified, he thought part of the problem with the House amendment was, where it said a facility that involves a high degree of public interest. There would need to be a determination of what was a high degree of public interest, because that's a rather ambiguous term. It could be argued perhaps that all of these involve a high degree of public interest, and therefore, the purpose of allowing the PLPs to take the initial step to cleanup would be defeated by that amendment. He made a friendly reminder about the 24 month language on page 7, line 4, that would need to be changed to conform with the other language.

Additional exhibit - Missoula county Commissioners - EXHIBIT 2.

HEARING ON HB 154

Sponsor: REP. LILA TAYLOR, HD 5, Busby

Proponents: Mr. John North, Chief Legal Counsel, Department of Environmental Quality, State of Montana.
Mr. Jim Mockler, Executive Director, Montana Coal Council.
Mr. Ted Lange, Representative, Northern Plains Research Council.

Opponents: None

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on March 19, 1997,
at 3:00 PM, in Room 312.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. William S. Crismore, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Mack Cole (R)
Sen. Thomas F. Keating (R)
Sen. Dale Mahlum (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Mike Taylor (R)
Sen. Fred R. Van Valkenburg (D)

Members Excused: None

Members Absent: None

Staff Present: Larry Mitchell, Legislative Services Division
Gayle Hayley, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB546 Posted March 3, 1997
Executive Action: HB524

HEARING ON HB546

Sponsor: REP. BILL TASH, HD 34, DILLON

Proponents: Steve Pilcher, Western Environmental Trade Assn.
John Bloomquist, Mt. Stockgrower's Assn.
Patrick Heffernan, Mt. Logging Assn.
John Youngberg, Mt. Farm Bureau
Dan Pittman, Society of American Foresters
Cary Hegreberg, Mt. Wood Products
Tim Hunter, City of Missoula
Alec Hansen, Association of Cities and Towns
Leo Berry, Mt. Power Company
Les Graham, Mt. Cattlewomen's Assn., Mt. Dairy Assn.

statement, "are we doing enough fast enough?" He said there were no fantasies or quick fixes, but this was a place to start.

HB546 is a place to find the solutions and do it in a balanced way that will be long term solutions rather than quick fixes. It cost a lot of money to bring suit, as **Mr. Jenson** pointed out and it cost a lot of money to defend suits. He said everybody would be a lot better off if the money spent on litigation was put on the ground finding solutions to the problem. He said good points made by **Dr. Watson** and appreciated her testimony.

With regards to costs for clean-up of the impaired waters, it is hard to put any fixed cost on it based on a particular reach or stream. There are too many variables involved. **Dr. Watson** brought up a very good point on that respect, that the clean-up costs will be on-going but a lot of times these streams do in fact clean up themselves. That's why it is important to be good stewards of the land. He said the ones that manage the land correctly, and take care of the resources, have much fewer problems. The exploiters are the ones that are against it. As a state, we can leave this better than we found it and by all means we are obligated to do so. Through this piece of legislation, it is a place to start. He hoped the committee would concur and pass this bill.

{Tape: 2; Side: B; Approx. Time Count: 5:30; Comments: None.}

CHAIRMAN GROSFIELD closed the hearing on HB546.

EXECUTIVE ACTION ON HB524

Amendments to HB524 were distributed, (EXHIBIT 13,14, and 15).

Amendments: hb052401.alm

Motion: SEN. BROOKE MOVED AMENDMENT hb054601.alm as contained in EXHIBIT 13.

Discussion:

SEN. BROOKE explained the first amendment was an attempt to have parallel language. The second amendment was put forward as a result of the situation in Missoula, the White Pines Sash, which involved a high degree of public interest. She explained that many people from her area would rather have the Dept. do the remedial action health study versus what was outlined in the bill. She said this amendment would put the responsibility back to the Dept. to determine the health risk.

SEN. TAYLOR asked SEN. BROOKE if this would take away the self-auditors? She said yes, it defines a different situation for when the person liable would go forward with this action and it would put it back into the Dept.'s hands.

SEN. TAYLOR asked SEN. BROOKE how she would define a "high health risk?"

SEN. BROOKE said there were many ways to define it but she thought if any groundwater were effected by contaminants of high toxicity, this would pose a high health risk.

SEN. WILLIAM CRISMORE stated that the amendment would change the intent, and asked Leo Berry to comment on this.

Leo Berry said this amendment was offered in the House and the people that were supporting the bill agreed to the other amendment offered, but not to this one. He said the amendment did change the intent of the bill. Mr. Berry said under the law, even with this bill, the agency retained the ability to review all work and may require changes to be made if needed.

CHAIRMAN GROSFIELD asked Mr. Berry if the amendment passed, would this in several cases, require a double expenditure of monies?

Mr. Berry believed that the way the system worked presently, a double expenditure of money exists regardless of who does the work and it didn't affect the duplication issue one way or the other. He said it was a matter of the belief that private parties can do the job as well and less expensive.

SEN. BEA MCCARTHY asked SEN BROOKE about the words, " high degree of public interest."

SEN. BROOKE said the intent of the amendment was to somewhat tighten the reins and give the Dept. the same authority they have now in certain situations. She said in Missoula a situation triggered an incredible high degree of public interest because of the location of a contaminated mill site, which was within an urban area. The water testing that was performed in the area revealed water well contamination. This resulted in a high degree of public interest. SEN. BROOKE did not feel the amendment would change the intent of the bill.

SEN. DALE MAHLUM asked Denise Mills, DEQ, doesn't the Dept. have to sign off on the remedial work of a private contractor when it is completed?

Denise Mills said that was correct, and the work must be done in accordance with industry's standards, so to speak, and acceptable with the Dept.

SEN. MAHLUM asked SEN. BROOKE about the purpose of the amendment since work still has to be approved by the Dept.

SEN. BROOKE said the amendment would give more control or direction to how that health study would be carried out. She thought the Dept. would take a step down and the other parties would have more of a lead in the process, if this amendment was not put into the bill.

CHAIRMAN GROSFIELD commented that Amendment No. 1 was a good suggestion, however, he had some reservations on Amendment No. 2. He thought determining a degree of public interest or even high health risk could be very subjective. For example, a situation may occur where there may be low risks and low levels of interest, but midway through the process, a newspaper editorial triggered a high degree of public interest. Then the process would have to begin anew or possibly go to court because the high degree of public interest was not recognized. He did not feel it was a good idea to set this type of thing up. He would rather segregate the two amendments, and vote on No. 1 first.

Motion/Vote: **CHAIRMAN GROSFIELD** MOVED TO ADOPT AMENDMENT NO. 1 AS CONTAINED IN EXHIBIT 13. MOTION CARRIED 9 to 0.

Vote: Motion to adopt Amendment No. 2, motion failed 7 to 2, with **SEN. BROOKE** AND **SEN. VAN VALKENBURG** voting aye.

Discussion: **SEN. VAN VALKENBURG** said he received a proposed amendment from **Peter Neilsen, Missoula City-County Health Dept.**, and he asked Mr. Mitchell to prepare an amendment based on **Mr. Neilsen's** suggestion. He then forwarded that to **Mr. North, DEQ**, for consideration. **Mr. Berry, and Ms. Hedges** were asked for any suggestions concerning ways to avoid duplication of health risk assessments. **SEN. VAN VALKENBURG** said the assessments have a high price tag, in the area of \$100,000, and it might be possible to have a mutual agreeable contractor do the health risk assessment, instead of two assessments being done.

Ms. Hedges said she spoke with **Leo Berry** about the same issue and discussed how the Dept. could go about developing rules and criteria on hiring contractors jointly. This was a solution that both **Mr. Berry** and herself agreed would be worth addressing.

Mr. Berry said a joint hiring process would be beneficial, and would give the agency and the public more confidence in the work that would be done. He agreed that the duplication work on these sites would be a waste of everyone's money and would like to see some kind of methodology used to eliminate that duplication. He said he talked with **Denise Mills** and **Director Simonich** about this and they thought the Dept. had the authority to do it now. He did not object to the amendment that was proposed.

Director Simonich said the Dept. did not object to the Amendment. He wasn't sure if it was absolutely necessary because nothing he knew about presently, prohibited the Dept. from doing what he thought this did. In terms of allowing a joint process of selection, he thought that would be appropriate, but he hesitated to have the Dept. jointly enter into a contract. **Director Simonich** felt two bosses on the contract would not be a good idea and a separation should exist between the Dept. and the PLP.

SEN. MCCARTHY said if this amendment had been in effect when we were doing the clean-up of the golf course in Anaconda, it would

have helped matters tremendously. She said there had been tremendous duplication in that instance.

Director Simonich said that was done under CECRA, a federal superfund program.

SEN. VAN VALKENBURG said based on the answers that Mr. Berry, Ms. Hedges, and Director Simonich had given, he was not going to offer the amendment that he had prepared at the request of Mr. Neilsen, and he was going to offer the Amendment that Ms. Hedges submitted .

CHAIR. GROSFIELD commented that according to what was said in SB197, agencies cannot make rules on subjects that have not been considered by the Legislature. He thought it was important to have this amendment in this bill. He read the amendment which is attached as EXHIBIT 15, 1. Page 8, Line 5, insert: "NEW SECTION. Rulemaking authority - remedial action contractors. The department shall develop rules that allow for the joint selection and/or hiring of remedial action contractors."

Motion/Vote: SEN. VAN VALKENBURG MOVED THE AMENDMENT by Anne Hedges, EXHIBIT 15, and to allow any technical changes be made to the amendment if needed. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. VAN VALKENBURG MOVED THE AMENDMENT hb052402.alm as contained in EXHIBIT 14. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. TAYLOR MOVED HB524 AS AMENDED. HB524 PASSED AS AMENDED 7 TO 3, WITH SEN. BROOKE, SEN. VAN VALKENBURG AND SEN. MAHLUM VOTING NO.

CHAIRMAN GROSFIELD closed the hearing at 6:03 PM.

Amendments to House Bill No. 524
3rd Reading Copy - blue copy

Requested by Senator Brooke
For the Senate Committee on Natural Resources

Prepared by Larry Mitchell
March 18, 1997

1. Page 1, line 27.

Following: "to"

Insert: "properly and"

2. Page 1, line 28.

Following: "action."

Insert: "For a facility that involves a high degree of public interest or a potentially high health risk, the department may determine that a remedial action health study, including an assessment of health risk, may not be performed by a person that is liable under 75-10-715(1)."

Amendments to House Bill No. 524
3rd Reading Copy - blue copy

Requested by Senator Grosfield
For the Senate Committee on Natural Resources

Prepared by L. Mitchell
March 19, 1997

1. Page 7, line 4.
Strike: "24"
Insert: "60"

2. Page 8, following line 3.
Insert: "NEW SECTION. **Section 5. Applicability.** [This act] does not apply to any facility for which an administrative order has been issued pursuant to 75-10-711 prior to [the effective date of this act] or to any facility for which the department of environmental quality and a liable or potentially liable person have, prior to [the effective date of this act], entered into an agreement regarding the performance of remedial action for that facility."

Renumber: subsequent section

Amendments to HB 524
Second Reading Copy

Prepared by Anne Hedges
MEIC

1. Page 8, Line 5.

Insert: "NEW SECTION. Rulemaking authority - remedial action contractors. The department shall develop rules that allow for the joint selection and/or hiring of remedial action contractors."

SEN:1997
wp.rollcall.man
CS-09

EXHIBIT NO. _____
DATE _____
BILL NO. _____

MOTION: Sen. Brooke moved amendment 1 + 2.
amendment 1. passed
amendment 2 failed 7 to 2

[illegible]

SEN:1997
wp:rlclvote.man
CS-11

MONTANA SENATE
1997 LEGISLATURE
NATURAL RESOURCES COMMITTEE
ROLL CALL VOTE

GENERAL NATIONAL RESOURCES

EXHIBIT NO. _____

DATE _____

BILL NO. _____

DATE 3-19-97 BILL NO. HB 524 NUMBER

MOTION: Sen. Mike Taylor moved HB 524 as
amended, Passed 7 to 3 with Sen. Brooks
Sen. Van Valkenburg, Sen. Mahlen Voting NO.

[illegible]

SEN:1997
wp:rlclvote.man
CS-11